same objection must have anything to do with the present application. Therefore, I am of the view that the applicant has not proved mala fides on the part of the Lembaga when rejecting the present application for those licences in respect of the first half of 1988. In conclusion, I hold that the facts relating to the present application do not constitute such an exceptional circumstance in order that I may properly exercise my discretion to grant the remedy prayed for.

Application is dismissed with costs.

Application dismissed.

Solicitors: *Siva Ram & Associates.*

Reported by *Ng Sheau Jiuan*

Patrick Rao v Subramaniam & Ors

HIGH COURT (KUALA LUMPUR) CIVIL SUIT NO F623 OF 1984
SITI NORMA YAAKOB J
12 FEBRUARY 1988

Land Law – Purchase of land – Purchase by trustees – Trust in favour of actual purchasers not executed – Injunction to restrain trustees from dealing with land – Setting aside.

The first to the fourth defendants purchased certain lands as trustees of an association for and on behalf of the plaintiff and 99 others. The plaintiff and the 99 others contributed certain sums of money for the purchase. The intention of all the people was that the land should be converted into a housing estate for the plaintiff and the others. However, the defendants did not execute a trust in favour of the plaintiff and the other purchasers as promised. The defendants found a third party to whom they wanted to sell the land. To protect his interest, the plaintiff obtained an ex parte injunction restraining the defendants from dealing with the land. The defendants applied to set aside the injunction.

Held: As the defendants' contentions had no merits, the application to set aside the injunction was dismissed.

Legislation referred to
National Land Code 1965 s 205(3)

G Vadiveloo for the applicants.
G Vargheese for the respondents.

Cur Adv Vult

Siti Norma Yaakob J: In this suit, the plaintiff claims that principally as a beneficiary of a resulting trust, he is entitled to be declared so, as well as entitled to his respective share of a piece of land over which the defendants hold as trustees.

It is not disputed that the land in dispute is agricultural land and was purchased on 25 April 1975 to better the lot of the Indian community. To that end, there was every intention of developing it into a housing estate, for which conversion and subdivision would become necessary, and individual titles ultimately issued to the purchasers who are the plaintiff and 99 other persons. They each contributed sums varying from $3,000–$3,500 for their respective shares and these were paid to the first to fourth defendants who were and are still office-bearers of the fifth defendant. However, the sale and purchase agreement was executed by the first to fourth defendants as purchasers in their capacity as trustees of the fifth defendant and receipts of the sums collected from the 100 purchasers were issued by the fifth defendant.

In a letter dated 12 June 1980, the present solicitors for the first to fourth defendants indicated to the plaintiff that the first to fourth defendants would, upon registration of the memorandum of transfer, execute a trust in favour of all the 100 purchasers and that the plaintiff's entitlement to the land will be 1/104 share. From this letter, it is very clear that first to fourth defendants, who did not contribute anything to the purchase price in the first place, had also included themselves as beneficiaries under the proposed trust to be created. The contents of this letter, however, run contrary to the sale and purchase agreement as well as the declaration made by the first to fourth defendants in their letter dated 16 November 1979, wherein they had declared that the land had been purchased by members of two branches of the fifth defendant and that they, the first to fourth defendants, hold the land as trustees for the fifth defendant.

More than 12 years after its purchase, the land has still not been converted or subdivided into housing lots as its location next to Subang Airport made it not feasible for such conversion and subdivision and as for the issue of separate titles to the plaintiff and the other 99 purchasers, this has now become impossible by virtue of s 205(3) of the National Land Code that forbids the issue of separate titles to agricultural land less than one acre in size. For these reasons, the defendants have negotiated and found a third party who is willing to purchase the property from them. To protect his interest, the plaintiff had on 27 May 1985 obtained an injunction, ex parte, to restrain the defendants, their servants or agents from dealing with the land in whatsoever manner.

A year and ten months after the injunction had been obtained, the defendants applied, inter alia, to have it set aside on the following grounds:

(1) Delay in the service of the injunction.
(2) Duplicity of actions as the plaintiff had already filed an earlier suit seeking the same remedies.
(3) Circumstances have changed to warrant the dissolution of the injunction.

Although the ex parte injunction was obtained on 27 May 1985, it was only served on the defendants almost seven months later on 7 December 1985. No reason was given by the plaintiff for this unusually inordinate delay especially when it was obtained ex parte on a certificate of urgency.

Just as the defendants complain that this delay is fatal, the defendants have also not been conducting their affairs speedily, for it took them another year and three months after service of the injunction on them to file the notice of motion, inter alia, to have the injunction set aside. They justify this delay to their attempts with the plaintiff to have the matter amicably settled. As both parties had been rather lax in enforcing their rights, I had considered that neither of them can plead delay against the other as a ground for dissolving or retaining the injunction. Attempts at settlement may well be the very cause of the delay that prevented either party from enforcing their rights promptly.

In his affidavit in support of his application for the injunction, the plaintiff had disclosed that two of the purchasers representing 78 other purchasers including himself had earlier filed civil suit F261/81 against the first to fourth defendants seeking similar remedies as in this case before me. The fifth defendant was not made a party to that earlier action but reference was made to it as the plaintiffs have pleaded that they are members of the fifth defendant. Proceedings in that earlier action had advanced to the stage where the plaintiffs had applied for summary judgment under O 81 but that application was dismissed and the suit is still pending.

The defendants now rely on this earlier civil suit to plead that since there is a duplicity of actions, the plaintiff is debarred from seeking any relief in the suit before me in his personal capacity and that being so, the application for the injunction should not have been entertained.

Admittedly, there are two pending actions pertaining to the same dispute, the only difference being that in the earlier action, the suit was filed by two purchasers in their personal capacities as well as representing 78 other purchasers including the plaintiff. Another difference is that the fifth defendant was not cited a party. In the suit before me, the plaintiff sues in his personal capacity and has cited the fifth defendant as one of the defendants. He also denies that he is a member of any branch of the fifth defendant.

As far as I am concerned, since both suits seek practically the same remedies, the most justifiable and practical solution is to have both suits consolidated and tried as one action, and it is my considered opinion that their presence alone cannot be relied upon as a ground for dissolving the injunction. This is so as there are disputed facts disclosed in the affidavits. To begin with, there need to be established by evidence whether the plaintiff in this suit before me is a member of any of the branches of the fifth defendant. There is no specific denial of this by the defendants in their affidavit in support of their application to have the injunction set aside but their counsel in his submission before me drew my attention to the statement of claim in the earlier action wherein the plaintiff has admitted being a member of the fifth defendant.

Then again, there is the dispute over the entitlements of the purchasers. Clearly, the pleadings show that the funds for the purchase of the land came from the plaintiff and 99 others. Neither any of the defendants had contributed to the purchase price and yet the first to fourth defendants have declared the plaintiff's entitlement as being 1/104 thereby giving themselves a share of the land.

The defendants have admitted that there is a resulting trust for the 100 purchasers but who in law are the trustees of such a trust? In an undated letter which has been exhibited by the defendants in their affidavit, written by the fifth defendant and which was received by their present solicitors on 8 August 1979, the fifth defendant has named four persons, two of which being the first and second defendants, as being its trustees to deal with all matters pertaining to the land. But a transfer dated 4 September 1979 and the declaration of trust dated 16 November 1979 were all executed by the first to fourth defendants as trustees of the fifth defendant and apart from the first and second defendants the third and fourth defendants are not the duly appointed trustees of the fifth defendant. All these disputed facts can only be resolved by oral evidence and their presence alone is all the more reason that the status quo of the parties be maintained until such disputes have been resolved.

Yet another ground pleaded by the defendants as to why they should be free to deal with the land is the introduction of s 205(3) of the National Land Code which forbids the issue of separate titles of agricultural land of less than one acre in size. Needless to say, this prohibition became law on 1 June 1985 but the defendants cannot plead this change in law as a circumstance to warrant the setting aside of the injunction. They must remember they had purchased the land in 1975, and although the permission to transfer was only given by the Estate Land Board on 3 May 1979, and the memorandum of transfer executed on 4 September 1979, yet nothing was done by them up to the imposition of the prohibition under s 205(3).

I also attach no merit to the defendants' contention that no housing scheme will be entertained by the state government as the land lies directly under the flight path of aeroplanes landing and taking off at Subang Airport. Such a contention is immaterial and irrelevant and at most, I consider such a plea as being short-sightedness

on the part of the defendants, who as champions for the landless, had embarked on the housing scheme to better the lot of their own community.

As there were no concrete and tangible reasons given why the injunction should be set aside, I had accordingly dismissed the defendants' application with costs.

Order accordingly.

Solicitors: *Vadiveloo & Co*; *Richard Ho*.

Reported by *Gabriel Sebastian*

Public Prosecutor v Ng Chong Wan

HIGH COURT (KUALA LUMPUR) – FEDERAL TERRITORY CRIMINAL APPEAL NO CR 52-50 OF 1986
ZAKARIA YATIM J
5 DECEMBER 1987

Criminal Procedure – Sentencing – Seven years' imprisonment and six strokes of whipping for possession of revolver – Five years' imprisonment for possession of ten rounds of ammunition – Concurrent sentences imposed – Whether sentences inadequate – Whether consecutive sentences should be imposed – Principles applicable – Firearms (Increased Penalties) Act 1971, s 8 – Arms Act 1960 (1978 Revised), s 8(a)

The respondent pleaded guilty to the offences of possession of a revolver and ten rounds of ammunition. The offences were punishable under s 8 of the Firearms (Increased Penalties) Act 1971 and s 8(a) of the Arms Act 1960 (1978 Revised) respectively. The trial court sentenced him to seven years' imprisonment and six strokes of whipping for the first offence and five years' imprisonment for the second offence, both sentences to run concurrently. The Public Prosecutor appealed against the sentences imposed, contending that they were manifestly inadequate and that the sentences should be made consecutive.

Held, dismissing the appeal: (1) The court will only interfere with the sentences if the court below had erred in principle or when there was a failure to apply the right principles when passing the sentences.

(2) When considering what should be the proper sentences in cases of possession of firearms and ammunition, the court has to bear in mind that public interest should be protected.

(3) The trial court took into account the public interest and applied the deterrent principle. It had applied the right principle. It was not wrong in law when it ordered the sentences to run concurrently.

Cases referred to
1 *Abu Bakar bin Alif* v *R* [1953] MLJ 19 (folld)
2 *PP* v *Fam Kim Hock* [1957] MLJ 20 (folld)
3 *PP* v *Teh Ah Cheng* [1976] 2 MLJ 186 (folld)
4 *PP* v *Chung Kwong Huah* [1981] 1 MLJ 316 (folld)
5 *Lee Chow Meng* v *PP* [1976] 1 MLJ 287 (folld)

Legislation referred to
Arms Act 1960 (1978 Revised) ss 8(a), 9(a)
Firearms (Increased Penalties) Act 1971 s 8

C W Chan for the respondent.
Ng Aik Guan (Deputy Public Prosecutor) for the Public Prosecutor.

Cur Adv Vult

Zakaria Yatim J: The respondent was charged in the Sessions Court for possession of a Smith & Wesson .38 special revolver, an offence punishable under s 8 of the Firearms (Increased Penalties) Act 1971. He was also charged for possession of ten rounds of .38 special revolver ammunition, an offence punishable under s 8(a) of the Arms Act 1960 (1978 Revised).

The respondent pleaded guilty to both charges. On the first charge, he was sentenced to seven years' imprisonment and six strokes of whipping. On the second charge, he was sentenced to five years' imprisonment with effect from the date of arrest. Both sentences were to run concurrently.

The Public Prosecutor was dissatisfied with the sentences passed by the president and appealed to this court against both sentences. The deputy public prosecutor in his submission told the court that the sentences were 'manifestly inadequate and inappropriate'. According to him, the respondent had one previous conviction for receiving stolen property. The learned deputy urged the court to enhance the sentences or, alternatively, the two sentences be made consecutive.

The first point to consider is whether the court should interfere with the sentences passed by the court below. The court will only interfere with the sentences if the court below had erred in principle or when there was a failure to apply the right principles when passing the sentences: see *Abu Bakar bin Alif* v *R*.[1] The court may also interfere with the sentences if the sentences are unsuitable to the proved facts and circumstances: see *PP* v *Fam Kim Hock*.[2]

The courts in this country view offences of possession of firearms and ammunition very seriously. In *PP* v *Teh Ah Cheng*[3] Abdoolcader J, as he then was, expressed the view of the court in the following words:

> It is my view that particularly in these times where the unlawful possession and use of firearms is rampant and ever increasing, a custodial sentence at the very least, of a term commensurate with the circumstances of the case, is called for ... The courts may not perhaps have to wholly reflect public opinion but they certainly must not be indifferent or disregard it, and it must be made abundantly clear that in the light of the appalling increase in crimes involving violence and the unlawful possession and use of lethal weapons, society is crying out 'enough is enough' and is no longer in any mood to tolerate such offenders who like serpents in the front lawn of justice disrupt law and order. So be it clearly made known that the forces of justice will be vigorously brought to bear upon these engineers of evil who must be made to realize that if they indulge violence or arm themselves with weapons of violence they will lose their liberty ...

In *PP* v *Chung Kwong Huah*[4] Chan J said: